ORIGINAL

0000102001

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
2009 AUG 26 P 3:41
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
AUG 26 2009
DOCKETED BY

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY AND VERIZON CALIFORNIA, INC.'S JOINT PETITION FOR THE ESTABLISHMENT OF AN UNDERGROUND COVERSION SERVICE AREA.

Docket Nos. E-01345A-07-0663
T-01846B-07-0663

Hillcrest Bay, Inc.'s Post-Hearing Brief

I. Introduction.

Hillcrest Bay is unique. It has stunning views of Lake Havasu, and is bordered by a wildlife refuge and other public land. Those views are marred by an extraordinary tangle of overhead utility lines. For a number of years, Hillcrest Bay, Inc. ("Hillcrest") and members of the community have worked to move those lines underground. Many residents, on both sides of the undergrounding debate, spoke with passion about the quality of life and benefits of living in Hillcrest Bay. That passion extends to the protracted dispute concerning undergrounding of utility lines. But a clear majority of those expressing their opinion continue to support the project.

Hillcrest has met all requirements under Arizona's using Arizona's Underground Conversion Service Area Act.[1] The Act requires the Commission to determine: (1) whether 40% or more of the property owners (or owners controlling 40% or more of the area) have objected to the underground conversion; and (2) whether the conversion is economically feasible.[2] The record does not support a finding of 40% opposition. The July 2009 supplemental hearing shows that the conversion is economically feasible because:

---

[1] A.R.S. § 40-341 et seq. (the "Act")
[2] See Decision No. 55490 (July 21, 1970) at 5. (describing Commission's duties under the Act).

- Low-income lot owners will receive an unprecedented level of support through Hillcrest's Financial Assistance Program;
- Costs are lower;
- Jobs will be created for the community;
- Property values will increase;
- The decrease in property values from the addition of 42 new utility poles will be prevented;
- Residents of 46 properties with structures encroaching utility easements will not be forced to pay for overhead line relocation or removal of the encroachments; and
- APS will avoid the cost of building 42 new utility poles.

In addition, underground conversion will eliminate safety issues from overhanging power lines, and will eliminate potential health issues from excessive bird droppings. For these reasons, Hillcrest implores the Commission to approve the establishment of an Underground Conversion Service Area.

II. Economic Feasibility.

A. Financial Assistance Program.

Hillcrest is sensitive to the needs of its low income residents, especially in these difficult times. For this reason, Hillcrest has established an unprecedented Financial Assistance Program for low income residents. The program has three parts: free conversions, a 15% discount, and a financial assistance fund.

Hillcrest has worked with a contractor, Tades Inc., to develop the cost estimates and the Financial Assistance Program. Tades has offered to do free underground conversions (private costs) for five low income residents.[3] In addition, Tades has offered a 15% discount to the public conversion costs for each low income landowner.[4]

[3] July 21, 2009 Tr. at 132.
[4] Id.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

In addition to the assistance offered by Tades, Hillcrest has established a fund to assist low income landowners. The fund has commitments of $29,200.[5] Of that amount, Hillcrest has committed $9,000 itself, and the remainder has been committed by generous Hillcrest members.[6]

Hillcrest's Financial Assistance Program will help protect low-income landowners from the burden of the underground conversion. No previous underground conversion has had such a program.

B. Lower Costs.

Hoping to lower the burden to landowners, Hillcrest sought out a new cost estimate. The cost estimate was from Tades, Inc., a company specializing in utility work. Tades submitted two estimates. The first cost estimate incorporates the cost information previously provided by APS and Verizon, and only updates the "private property" trenching and electrical costs. The first cost estimate is $2,859,435, a reduction of $51,093. The second cost estimate assumes that the contractor will be allowed to do some of the work that APS and Verizon would otherwise have done. Under the second scenario, the cost is only $2,245,403.57, a reduction of $665,124, or about 23%.

Thus, if Tades is allowed to do the work, there will be substantial cost savings. At the July 2009 supplemental hearing, APS suggested that it may not allow Tades do the work. But APS's witness, Mr. Wilson, testified that that APS will typically approve an experienced contractor that does significant utility work.[7] Chris Kellogg, the Senior Vice President of Tades, testified as to his many years of experience, and the significant projects that Tades has undertaken.[8] Thus, Tades is likely to be approved by APS once the final paperwork is submitted.

Mr. Wilson testified that the contractor that APS originally selected is no longer available to do the work.[9] He also testified that the bids APS is receiving are currently less than in 2006 and

---

[5] July 21, 2009 Tr. at 51-53.
[6] Ex. H-4 (Commitment Letters).
[7] July 22, 2009 Tr. at 292.
[8] July 21, 2009 Tr. at 128.
[9] July 22, 2009 Tr. at 292-93.

2007 due to the economic downturn.[10] Thus, even if APS selects another contractor, costs are likely to be lower than originally expected. However, to the extent that APS considers other contractors, the Commission should direct APS to consider the value of the Low Income concessions made by Tades in evaluating the bids.

C. Jobs.

Mr. Kellogg testified that construction activity in La Paz County is at a standstill, and "absolutely nothing" is being built.[11] He also testified that the conversion would create 10-15 jobs, and that 50% of the jobs could go to local residents.[12]

D. Increase in property value.

Mr. Garcia is an expert appraiser with impressive academic credentials and many years of valuation experience, including a high-level valuation position with PriceWaterhouseCoopers.[13] He testified that 80% of the properties will see an increase in value from 5-15%.[14] Thus, a home valued at $200,000 would likely increase in value between $10,000 and $30,000.

Mr. Garcia testified that the public costs could be paid back over a 15 years, while the increase in value will take place as soon as the undergrounding is complete.[15] Mr. Garcia stated that investing in the undergrounding would likely provide a good "return on investment" given the likely costs compared to the likely increase in value.[16]

E. Prevention of loss of property value due to new poles.

Mr. Wilson testified that, if the overhead conversion is not approved, APS would over time replace the existing back-of-the-home lines with overhead lines in the front of the homes.[17] He testified that 42 new poles would be added.[18] In some cases, up to four new poles would be added

---

[10] July 22, 2009 Tr. at 363.
[11] July 21, 2009 Tr. at 129.
[12] July 21, 2009 Tr. at 129.
[13] July 21, 2009 Tr. at 222-223.
[14] July 21, 2009 Tr. at 227-228; Ex. H-1 at Ex. C.
[15] July 21, 2009 Tr. at 236.
[16] July 21, 2009 Tr. at 235.
[17] July 22, 2009 Tr. at 287-288 and 378; Ex. A-12.
[18] Id.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

at once.[19] Verizon's witness, Mr. Kearns, testified that Verizon would keep its existing lines in the back of homes.[20] Thus, the new APS poles would be in addition to, and not replacements for, the existing poles.[21] These new poles will only exacerbate the situation. Mr. Garcia testified that 42 additional poles would likely worsen property values.[22] Avoiding this likely future loss is another economic benefit of the underground conversion.

F. Prevention of costs to lots with encroachments into utility easements.

Mr. Wilson testified that APS has identified 46 lots with structures encroaching into utility easements.[23] Mr. Wilson also testified that if the underground conversion is not approved, APS is not likely to allow these encroachments to continue.[24] He testified that if APS denies permission, the landowner has two options: pay APS to move its line, or remove the structure.[25] Removing the structures would likely involve costs, as well as possible diminution in value of the property due to loss of the structure. Under either option, the landowner will face costs – and those costs can be avoided by the underground conversion.

G. Avoided Costs.

Mr. Wilson testified that the 42 new poles would cost $327,000.[26] Mr. Wilson explained that these costs would be avoided if the underground conversion goes forward, and therefore APS has agreed to reduce the cost of the underground conversion by this amount.[27] A future underground conversion – after the new poles are built – would not benefit from this offset. Moreover, Mr. Wilson testified that once the 42 new poles are installed, the "undepreciated value" of the system would "significantly" increase, and APS would expect to be repaid this

---

[19] July 22, 2009 Tr. at 378.
[20] July 22, 2009 Tr. at 403-404.
[21] Id.
[22] July 21, 2009 Tr. at 227-28.
[23] July 22, 2009 Tr. at 369.
[24] Id.
[25] Id.
[26] July 22, 2009 Tr. at 288.
[27] July 22, 2009 Tr. at 275-276; *see also* January 18, 2008 Tr. at 104.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

undepreciated value in any future underground conversion.[28] Therefore, this is the best time to proceed with an underground conversion.

III. Health and Safety.

Photographs of Hillcrest Bay show utility lines overhanging patios and backyards, as well as support wires intermingled into residents' backyards and patios.[29] Mr. Kellogg testified that these lines do not meet current standards for new construction.[30] Mr. Wilson testified that the lines meet safety standards. However, he testified that this conclusion was based on the work of an APS employee whose name he does not know, and who does not directly report to Mr. Wilson.[31] The hearsay statement of an unknown worker with unknown qualifications is not a sound evidentiary basis for making important safety decisions. In addition, Mr. Wilson was not able to state the required horizontal clearance between structures and power lines.[32] Common sense – as well as Mr. Kellogg's testimony – suggest that power lines within easy reach are a safety hazard. APS will argue that its lines complied with standards in place at the time, and that subsequent encroachments into its easements are not its fault. Those are fair points; but the question is "where do we go from here?" Placing these lines underground will eliminate these problems. The alternative – removing encroachments or moving lines at landowner expense while adding yet more overhead lines and poles – is neither appealing nor sensible.

In addition, Mr. Wilson testified that outages from windstorms are less likely if the lines are placed underground.[33] And Mr. Sears testified to his concerns with the potential health impacts of excessive bird droppings.[34] While no expert has testified that such droppings are a health hazard, no expert has offered any assurance that they are not a hazard.

---

[28] July 22, 2009 Tr. at 289.
[29] Ex. H-2; Ex. H-1 at Ex. F; Ex. H-7.
[30] July 21, 2009 Tr. at 163.
[31] July 22, 2009 Tr. at 376.
[32] July 22, 2009 Tr. at 376.
[33] July 22, 2009 Tr. at 383.
[34] July 21, 2009 Tr. at 59.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

IV. Requirements of the Act.

A. The Act creates a clear and mandatory sequence of events.

The Act creates a specific sequence of events. First, proponents of an Underground Conversion Service Area must present a petition ("First Petition") to the relevant utility or utilities.[35] If the utility or utilities find that the petition is supported by 60% of the lot owners (and 60% of the area), they must complete a cost study and present the estimated costs in a joint report to the property owners.[36] Once the joint report is provided to the property owners, the proponents must gather petition signatures a second time (the "Second Petition"), again showing 60% support (both number of owners and area).[37] If the utility or utilities find that the proponents have shown 60% support, they must file an application with the Commission for approval.[38] No one disputes that the proponents in this case have satisfied these requirements.

Once the utility or utilities file their application, the Commission is required to hold a hearing "not later than 60 days nor sooner than thirty days."[39] The Act specifies that the Commission must consider whether the conversion is "economically and technically feasible" and whether 40% or more of the owners (or property area) have objected.[40]

B. The 40% opposition standard.

Much confusion seems to exist regarding the 40% opposition standard. This confusion stems from two sources: (1) an assumption that the lack of 40% opposition is the same as support of 60% or more; and (2) the use of a "double negative" in the statute. A close reading of the statute, in the context of the statutory scheme and intent of the Act and the Commission's historic interpretation of the Act, eliminates the confusion.

---

[35] A.R.S. § 40-342.
[36] Id.
[37] A.R.S. § 40-343(A).
[38] A.R.S. § 40-343(B).
[39] A.R.S. § 40-344(A).
[40] A.R.S. § 40-346(A).

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1. No more than 40% opposition is not the same as 60% or greater support.

The statutes concerning the First Petition and the Section Petition require the proponents of the underground conversion to show, at the time of the petition, 60% or greater support. If they fail to show 60% support, the conversion process ends. In contrast, at the hearing, 40% or greater opposition must be shown in order to end the conversion process. While at first glance, 60% support and no-more-than 40% opposition may seem to be two sides of the same coin, closer consideration reveals that they are separate standards.

The Arizona Legislature used the same wording (60% support) in the sections concerning the First Petition and the Second Petition. By using the same wording in related sections of the same Act, the Legislature clearly intended that those words be given the same meaning. But in the section concerning the hearing, the Legislature used entirely different wording ("no more than" 40% opposition). By using different language in the same Act, the Legislature has signaled that no-more-than 40% opposition means something different than 60% or greater support.

The difference arises from how silence is treated. Under the 60% support standard, silence is not counted as support. Thus, in the First Petition and the Second Petition, the proponents must obtain supporting signatures from 60% of property owners (and 60% of the area). In contrast, under a no-more-than 40% opposition standard, silence is not counted as opposition. Thus, mathematically, 60% percent support is a higher standard than the no-more-than 40% opposition standard, because a property that remains silent is not counted as support (under the 60% standard) or opposition (under the 40% standard).

Sixty percent support is a very high standard. The Legislature requires proponents to demonstrate to the utility 60% support for both the First Petition and the Second Petition. Once the proponents have passed these very high hurdles, the Legislature has sensibly required opponents to affirmatively come forward with a minimum level of opposition (40%) to derail the project.

This reading is consistent with the Commission's prior reading of the Act. The Commission has previously stated: "Aside from the Commission's finding regarding <u>feasibility</u> of

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

conversion, the Commission's only function herein is to determine whether 40% or more of all the property owners have objected to the formation of the underground CSA."[41] In short, the Commission must determine whether 40% or more have objected, rather than determining whether 60% or more still support the project.

2. The "double negative" issue.

The "no more than 40%" language is contained in a 197-word, poorly-drafted sentence. In full, the sentence reads:

> The corporation commission, board of supervisors or city or town council, as the case may be, **shall hold a hearing**, upon notice as provided in this article, **to establish the fact** that the requirements for the establishment of an underground conversion service area have been satisfied, and that **owners of no more than forty per cent** of the real property within the underground conversion service area, or no more than forty per cent of the owners of real property, **have not objected to the formation of the underground conversion service area**, and if the commission, board of supervisors or city or town council so determines, and if the commission, board of supervisors or city or town council further determines after considering all objections, that the cost of conversion as reflected in the joint report prepared pursuant to section 40-342 is economically and technically feasible for the public service corporations or public agencies involved and the property owners affected and that the underground conversion service area is a reasonably compact area of reasonable size, the commission, board of supervisors or city or town council shall then issue an order establishing the area as an underground conversion service area.[42]

Read literally, this could mean that the conversion area can be approved only if the "owners" who "have not objected" are "no more than forty per cent", i.e. if 60% or greater have objected. The goal of statutory interpretation is to "fulfill the intent of the legislature that wrote it". *See State ex rel. Department of Economic Security v. Hayden*, 210 Ariz. 522, 523 ¶ 7, 115 P.3d 116, 117 (2005). It is "the spirit of the law which is considered and which prevails"[43] and "strict rules of grammar will be ignored where they are inconsistent with the statute's general meaning and object."[44] Here, it is clear that the Legislature did not intend to require 60% or greater objections

---

[41] Decision No. 55490 at 5 (emphasis in original).
[42] A.R.S. § 40-346(A)(emphasis added).
[43] *Navajo Tribe v. Arizona Dept. of Administration*, 111 Ariz. 279, 281, 528 P.2d 623, 625 (1974).
[44] *State ex rel. Arizona Dept. of Revenue v. Phoenix Lodge No. 708, Loyal Order of the Moose, Inc.*, 187 Ariz. 242, 248, 928 P.2d 666, 672 (App. 1996).

to approve a conversion area. In the past, the Commission has sensibly read this language as meaning the conversion area must be rejected if "40% or more of all the property owners have objected."[45] Hillcrest agrees.

3. The record does not support a finding of 40% or more objections.

Mr. Wilson of APS presented an exhibit attempting to calculate the level of support based on filings in the docket. However, Mr. Wilson did not count the number of objections, and he testified that his exhibit does not show the number of owners who have "affirmatively stated opposition".[46] Thus, Mr. Wilson's exhibit does not demonstrate that "40% or more of all the property owners have objected."

C. Timing of opposition.

The Act requires that any objections or withdrawals of signatures be made "not later than 60 days nor sooner than thirty days" after the utilities file their Joint Application.[47] This hearing was held on January 18, 2008, and may be called the "Statutory Hearing". The Act also requires that objections (or withdrawal of support) must be made "not later than ten days before the date set for the hearing.[48]" This requirement must refer to the Statutory Hearing, because requirement is in the same subsection that determines the timing of the Statutory Hearing, and because the Statutory Hearing is the only hearing mentioned in the Act. Thus, APS's argument that the supplemental hearing in July 2009 is the same as, or a substitute for, the Statutory Hearing is incorrect.

Further, if these two measurements of support are not made at different times, the Act makes no sense. Mathematically, if support exceeds 60%, opposition could not exceed 40%. If the measurements were made at the same time, the language concerning 40% opposition would be superfluous, and statutory language is presumed to not be superfluous. *See Hayden, supra* ("[w]e interpret statutory language to give effect to each word of the statute, such that no clause, sentence

[45] Decision No. 55490 at 5.
[46] July 22, 2009 Tr. at 282:3-14.
[47] A.R.S. § 40-344(A).
[48] A.R.S. § 40-344(A).

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

or word is rendered superfluous, void, contradictory or insignificant.")(internal quotation omitted).

This reading is consistent with the Commission's interpretation of the Act in Decision No. 55490 (July 21, 1970). In that case, the Commission stated that the Act "makes it very clear that it is the responsibility of the public service corporations involved to determine whether the petitions are sufficient to trigger an application to the Commission for designation of the area as an underground CSA. Aside from the Commission's finding regarding feasibility of conversion, the Commission's only function herein is to determine whether 40% or more of all the property owners have objected to the formation of the underground CSA."[49] The Commission thus did not consider arguments concerning whether subsequent events rendered invalid some of the initial signatures supporting the conversion. The Commission only considered whether it received explicit objections exceeding 40%.[50] The Commission was also clear the objections could not be submitted after the deadline, stating the "statute required those persons objecting to register their objections with the Commission at least ten days prior to the hearing."[51]

Staff, Verizon, and APS have previously stated that as of the date of the Statutory Hearing (i.e. January 18, 2008) all requirements for approval of the underground conversion were met.[52] Under the Act, objections received after January 8, 2008 (i.e. 10 days before the Statutory Hearing), should not be considered.

D. Form of objections.

Lastly, even if the Commission disregards the statutory prohibition on late objections, many of the objections are still invalid under the Act. The Act requires that each objection be accompanied by an "affidavit of an owner of real estate" attesting to the validity of the signatures on the objection.[53] Many (perhaps all) of the objections do not comply with this requirement, and are therefore invalid.

---

[49] Decision No. 55490 at 5.
[50] Id.
[51] Id.
[52] See Joint Brief of APS, Verizon and Commission Staff dated February 19, 2008.
[53] A.R.S. § 40-345.1.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

V. Other issues.

A. Decision No. 67437.

The Administrative Law Judge asked the parties to brief what guidance, if any, can be found in Decision No. 67437 (Dec. 3, 2004)(the "2004 Decision") regarding the process of tabulating objections. The 2004 Decision provides no guidance. That decision was based on SRP's board's decision to deny the underground conversion.[54] Under the Act, if approvals from multiple public bodies are needed, all the bodies must vote to approve or the project is denied. Thus, SRP's denial meant the project was dead.

The 2004 Decision includes a conclusion of law that the 60% standard in A.R.S. § 40-343.A and the "no more than 40 percent" standard in A.R.S. § 40-346.A. were not met. Because these findings were not necessary to the resolution of the case, they can be considered "dicta". In any event, the 2004 Decision refers to the standard in A.R.S. § 40-343.A (60%) and standard in A.R.S. § 40-346.A (no more than 40%) separately, indicating that those are separate standards. There does not appear to be a Staff Report filed in the docket, so it is not clear what method Staff used in making its calculations. In addition, it does not appear that any party referred to the objection process specified in A.R.S. § 40-345. Thus, the 2004 Decision provides no guidance on the interpretation of A.R.S. § 40-345.

B. The Joint Application should not be dismissed.

The Administrative Law Judge also asked for briefing on APS's request for dismissal of the case. A motion to dismiss is typically filed early in a case. In a civil case, the motion to dismiss would be filed on or before the answer date. Although it is not clear when a motion to dismiss an underground facilities case is appropriate, APS motion must be untimely at this late date. Moreover, a motion to dismiss challenges the sufficiency of a complaint (or in this case, a Joint Application). Here, there is no dispute that the initial Joint Application contains all the required items; the issue is whether it should be granted on the merits. Lastly, in practical terms,

[54] Decision No. 67437 at Finding of Fact No. 19 and Conclusion of Law Nos. 4 and 5.

motions to dismiss are used to avoid discovery and trial. Here, the hearing is complete; there is no reason not to proceed to consider the case on the merits.

C. Lot 274.

Hillcrest agrees with Commission Staff that Lot 274 should be excluded from the Underground Conversion area.[55] Lot 274 is owned by La Paz County, and La Paz County requests that it be excluded.[56] In addition, Lot 274 is located "in a canyon" and it is not feasible to develop this lot.[57] Under A.R.S. § 40-346(B), the Commission "shall eliminate any territory" which "will not be benefited by" the underground conversion, or any parcel where the "conversion is not economically or technically feasible." Here, Lot 274's location and the statements of La Paz County show that Lot 274 should be excluded.

D. Cost allocation by square footage.

Finally, the Administrative Law Judge asked for briefing on whether Tades's method of allocating certain estimated costs based on square footage is lawful. The Act does not directly address how costs should be allocated in calculating such estimates. However, the Act does state that once the project is complete, the final public costs "shall be apportioned... based on the relative size of each parcel."[58]

VI. Conclusion.

Hillcrest Bay's natural beauty is why its residents treasure this unique area. That beauty is impaired by the numerous overhead utility lines. The underground conversion offers the chance to eliminate this unsightly impact. This chance will likely not come again. The conversion is economically feasible, given the extraordinary financial assistance program prepared by Hillcrest, the lower costs and benefits from jobs in the community, the increase in home values, the

[55] July 21, 2009 Tr. at 76.
[56] Ex. H-6.
[57] July 21, 2009 Tr. at 59-60.
[58] A.R.S. § 40-347.B.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

prevention of loss of home values due to additional poles, the prevention of landowner costs to remedy easement encroachments, and the benefit of the avoiding the costs of the 42 new poles.

Under the Act, the time for objections is long past. And even if new objections could be considered, no evidence was presented that 40% or more of landowners have objected. No party disputes that that conversion is technically feasible, or that the conversion area is "reasonably compact."[59] Accordingly, the requirements of the Act have been met, and the Commission should approve the establishment of the Underground Conversion Service Area.

RESPECTFULLY SUBMITTED this 26th day of August 2009.

ROSHKA DEWULF & PATTEN, PLC

By _____

Michael W. Patten
Timothy J. Sabo
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

Attorneys for Hillcrest Bay, Inc.

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

Original + 13 copies of the foregoing filed this 26th day of August 2009, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered/mailed this 26th day of August 2009, to:

Lyn Farmer, Chief ALJ
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

[59] A.R.S. § 40-346.A.

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

*****All Parties of Record *****

By Debbie Amaral

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800